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**VIA EMAIL**

January 14, 2016

Jeff S. Jordan, Esq.  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Re: MUR 6984 – Governor Jeb Bush, Jeb 2016, Inc., and William Simon in his official capacity as Treasurer of Jeb 2016, Inc.

Dear Mr. Jordan:

We represent Governor Jeb Bush, Jeb 2016, Inc. (“Jeb 2016”), and William Simon in his official capacity as Treasurer of Jeb 2016 (collectively, the “Respondents”) in the above-captioned MUR.

We have reviewed the Complaint filed on November 10, 2015 by the American Democracy Legal Fund (“ADLF”) alleging that the Respondents “appear to have engaged in illegal coordination through the use of a common vendor” in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “Commission”) regulations. Specifically, the Complaint alleges—with no supporting evidence—that two mailers disseminated by Right to Rise USA were coordinated with the Respondents through Redwave Communications, LLC (“Redwave”), thereby resulting in Right to Rise USA making prohibited and excessive in-kind contributions to the Respondents.

These allegations have no basis in law or fact. The mere existence of a common vendor, in and of itself, does not violate the Commission’s coordinated communication regulations. ADLF conveniently fails to mention in the Complaint that common vendors are quite ordinary and the Commission specifically promulgated a safe harbor for the establishment of a firewall to facilitate compliance in such situations. Moreover, the Respondents have taken steps to ensure that Jeb 2016’s campaign plans, projects, activities, and needs are not conveyed to Right to Rise USA through Redwave. As explained below, the facts clearly demonstrate that the Respondents’ consulting and vendor relationships do not satisfy the common vendor standard in the Commission’s coordinated communication regulations. Accordingly, the Commission should find no reason to believe that the Respondents violated the Act and promptly dismiss this matter.

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## FACTS

Jeb 2016 is the principal campaign committee of presidential candidate Governor Jeb Bush. In June 2015, Jeb 2016 retained David Kochel to provide political consulting services and serve as a senior advisor to the campaign. In addition to prohibiting Mr. Kochel from disclosing Jeb 2016's confidential information to any third party, Jeb 2016's contract with Mr. Kochel provides that:

Consultant shall comply with all applicable laws in the performance of the Services. Without limiting the foregoing, Consultant shall not coordinate with any political committee, entity, or individual in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("FEC") regulations. . . . Consultant represents that it has adequate knowledge of FECA and FEC regulations to perform the Services in compliance with FECA and FEC regulations, including, but not limited to, 11 C.F.R. §§ 109.20 through 109.37.

Consulting Services Agreement Between Jeb 2016 and D. Kochel (redacted copy attached as Exhibit A). Mr. Kochel also is the owner of Redwave, a political consulting firm. Mr. Kochel took a formal leave of absence from Redwave prior to becoming a senior advisor to Jeb 2016. Since Mr. Kochel went on a leave of absence from Redwave, he has had no involvement with Redwave's day-to-day operations or provision of services to its clients.

In June 2015, Jeb 2016 retained Albrecht Public Relations, LLC to provide political consulting services to Jeb 2016. Similar to Jeb 2016's contract with Mr. Kochel, Jeb 2016's contract with Albrecht Public Relations, LLC also prohibits the company from disclosing Jeb 2016's confidential information to any third party. The contract further provides that:

Consultant shall comply with all applicable laws in the performance of the Services. Without limiting the foregoing, Consultant shall not coordinate with any political committee, entity, or individual in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("FEC") regulations. . . . Consultant represents that it has adequate knowledge of FECA and FEC regulations to perform the Services in compliance with FECA and FEC regulations, including, but not limited to, 11 C.F.R. §§ 109.20 through 109.37.

Consulting Services Agreement Between Jeb 2016 and Albrecht Public Relations, LLC (redacted copy attached as Exhibit B). Albrecht Public Relations, LLC's owner, Tim Albrecht, is also an employee of Redwave. Redwave has represented to Jeb 2016 that it maintains a written firewall policy that meets the safe harbor requirements of 11 C.F.R. § 109.21(h), and that Mr. Albrecht works on the "candidate side" of the firewall for federal election purposes.

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**DISCUSSION**

**A common vendor relationship is not a *per se* coordination violation nor does it carry a presumption of coordination.**

ADLF alleges that because the Respondents and Right to Rise USA indirectly share a common vendor, Right to Rise USA's public communications *must* have been coordinated with the Respondents. But the Commission long-ago rejected this theory, firmly stating that vendors "are not in any way prohibited from providing services to both candidates . . . and third-party spenders." *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 436 (2003).

The mere existence of a common vendor does not implicate the conduct prong of the Commission's coordinated communication regulations. Indeed, in promulgating the common vendor standard, the Commission expressly rejected this suggestion, noting that "[i]t disagree[d] with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagree[d] with the commenters who suggested it established a presumption of coordination." *Id.* The Commission made clear that, in order for the common vendor standard to be satisfied, the vendor must actually convey information about the candidate's campaign plans, projects, activities, or needs to the person paying for the public communication or actually use information about the candidate's campaign plans, projects, activities, or needs in providing services to the person paying for the public communication. "This requirement encompasses situations in which the vendor assumes the role of a conduit of information between a candidate . . . and the person paying for the communication, as well as situations in which the vendor makes use of the information received from the candidate . . . without actually transferring that information to another person." *Id.* at 437.

ADLF fails to provide any such evidence or allege any specific acts or communications by Mr. Kochel or Mr. Albrecht that would constitute sharing or conveying nonpublic information about Jeb 2016's campaign plans, projects, activities, or needs. As the Commission has held before, "[p]urely speculative charges, especially when accompanied by direct refutation, do not form an adequate basis to find reason to believe that a violation of FECA has occurred." Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), at 3 (Dec. 21, 2000). Because the activities here fall squarely within the Commission's safe harbor and because ADLF has identified no specific activity or communication, there is no reason to believe that a coordination violation has occurred.

On this basis alone, the Commission should find that there is no reason to believe that Right to Rise USA paid for public communications coordinated with the Respondents through Redwave.

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**The Respondents took steps to ensure compliance with the Commission's coordinated communication regulations.**

In addition, the Respondents took steps to ensure that its retainer of Mr. Kochel and Mr. Albrecht would not result in inadvertent coordination through Redwave.

As noted above, Mr. Kochel took a leave of absence from Redwave prior to becoming a senior advisor to Jeb 2016. Since he began his leave of absence, Mr. Kochel has not been involved in the day-to-day operations of Redwave or the provision of services to its clients. Moreover, Mr. Kochel is contractually prohibited from sharing Jeb 2016's confidential information with anyone outside of Jeb 2016 and from engaging in any conduct that would violate the Commission's coordinated communication regulations.

Although Mr. Albrecht continues to work for Redwave, he provides services to Jeb 2016 through his consulting firm, Albrecht Public Relations, LLC. As the owner of Albrecht Public Relations, LLC, Mr. Albrecht is contractually prohibited from sharing Jeb 2016's confidential information with anyone outside of Jeb 2016 and from engaging in any conduct that would violate the Commission's coordinated communication regulations. Moreover, Redwave has represented to Jeb 2016 that it has established a written firewall policy to ensure that the campaign plans, projects, activities, and needs of its candidate clients are not conveyed to or used in providing services to its outside group clients, such as Right to Rise USA. Redwave has represented to Jeb 2016 that this written firewall policy meets the Commission's safe harbor at 11 C.F.R. § 109.21(h), and that Mr. Albrecht is on the "candidate side" of the firewall for federal elections.

The Complaint incorrectly draws a speculative conclusion of coordination based on the general fact that Mr. Kochel and Mr. Albrecht have been retained by the Respondents while having ties to Redwave. However, notwithstanding ADLF's failure to set forth any specific allegations or actual evidence, the facts set forth above clearly demonstrate they have not engaged in conduct implicating the common vendor standard of the Commission's coordinated communication regulations.

The Commission should find no reason to believe that the Respondents violated the Act or Commission regulations and promptly dismiss this matter.

Sincerely,

Megan L. Sowards, General Counsel  
Brandis L. Zehr, Deputy General Counsel

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# Exhibit A

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**CONSULTING SERVICES AGREEMENT**

~~THIS CONSULTING SERVICES AGREEMENT (this "Agreement") is made as of June 24, 2015, between Jeb 2016, Inc., a Florida not-for-profit corporation (the "Committee"), and David Kochel, a Individual/Business (circle one) ("Consultant").~~

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6. Confidentiality

shall not disclose the Confidential Information to any third party

Consultant

100442001

10. **Compliance with Law.** Consultant shall comply with all applicable laws in the performance of the Services. Without limiting the foregoing, Consultant shall not coordinate with any political committee, entity, or individual in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("FEC") regulations.

Consultant represents that it has adequate knowledge of FECA and FEC regulations to perform the Services in compliance with FECA and FEC regulations, including, but not limited to, 11 C.F.R. §§ 109.20 through 109.37.

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SIGNATURE PAGE TO CONSULTING SERVICES AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

COMMITTEE:

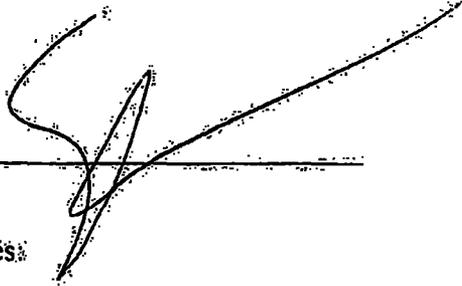
JEB 2016, INC.

By: \_\_\_\_\_

Sal Purpura  
Comptroller

Address for notices:

9250 W. Flagler Street, Suite 502  
Miami, FL 33174  
Attention: Sal Purpura



CONSULTANT:

David Kochel

By: \_\_\_\_\_

David Kochel



10044494001





**CONSULTING SERVICES AGREEMENT**

THIS CONSULTING SERVICES AGREEMENT (this "Agreement") is made as of June 15, 2015, between Jeb 2016, Inc., a Florida not-for-profit corporation (the "Committee"), and Tim Albrecht of Albrecht Public Relations LLC, an Individual/Business (circle one) ("Consultant").

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6. Confidentiality.

shall not disclose the Confidential Information to any third party

Consultant

100446442001

10. **Compliance with Law.** Consultant shall comply with all applicable laws in the performance of the Services. Without limiting the foregoing, Consultant shall not coordinate with any political committee, entity, or individual in violation of the Federal Election Campaign Act of 1971, as amended ("FECA"), and Federal Election Commission ("FEC") regulations.

Consultant represents that it has adequate knowledge of FECA and FEC regulations to perform the Services in compliance with FECA and FEC regulations, including, but not limited to, 11 C.F.R. §§ 109.20 through 109.37.

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SIGNATURE PAGE TO CONSULTING SERVICES AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

COMMITTEE:

JEB 2016, INC.

By:

Sal Purpura  
Comptroller



Digitally signed by Sal  
Purpura  
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JEB 2016, INC., email=spurpura@jeb2016.com, c=US  
Date: 2015.06.15  
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Address for notices:

9250 W. Flagler Street, Suite 502  
Miami, FL 33174  
Attention: Sal Purpura

CONSULTANT:

Tim Albrecht

By:

Handwritten signature of Tim Albrecht in black ink.

Tim Albrecht  
Albrecht Public Relations LLC

Address for notices:

110 56<sup>th</sup> Pl.  
West Des Moines, IA 50266

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**EXHIBIT A**

<i>Description of Services</i>	
<i>Term</i>	
<i>Fees</i>	

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